IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 5TH OCTOBER, 2007 / 13TH ASWINA, 1929

WP(C).No. 19328 of 2007(A)

PETITIONER:

PRATHIBHA KUMARI.V., AGED 38 YEARS,
W/O.G.ANIL KUMAR, TEACHER IN CHARGE,
M.G.T.H.S, MUKHATHALA, KOLLAM RESIDING AT
KOICKAL VEEDU, KOICKAL MURI, EAST KALLADA.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:

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1. THE DISTRICT EDUCATIONAL OFFICER,
KOLLAM.

2. THE D.E.O., KOLLAM IN THE CAPACITY AS
MANAGER, M.G.T.H.S, MUKHATHALA, KOLLAM.

3. SMT.SHEELA.B., HEAD MISTRESS,
VELAYUDHAN, MEMORIAL HIGH SCHOOL,
VADAVANNUR, PALAKKAD.

R1 & R2 BY ADV.SRI.T.T.MAHAMOOD
BY ADV. SMT.P.V.ASHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.19328 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the appointment order dtd.14.7.97.

Ext.P2: Copy of the appointment order dtd.4.12.97.

Ext.P3: Copy of the order dated 15.6.07.

RESPONDENTS' EXHIBITS:

Ext.R3(a): Copy of representation submitted by R3.

Ext.R3(b): Copy of order dtd.30.5.07.

Ext.R3(c): Copy of order dtd.4.6.07 in I.A.No.1688/07 in AS 122/02.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) No. 19328 of 2007 - A

Dated this the day of October, 2007

J U D G M E N T

M.G.T.H.S. Mukhathala is an aided High School under the administrative jurisdiction of the District Educational Officer (DEO), Kollam. In respect of the right to be the manager of the school, there was a civil suit, which is pending in appeal as A.S.No.120/2002 in this court. In that case, this Court appointed the D.E.O., Kollam, as the Receiver of the school to exercise the functions of the manager of the school. Accordingly, the D.E.O., Kollam has been functioning as the manager of the school. While so, the third respondent in this writ petition, who was the Headmistress of V.M.H.S., Vadavannur, Palakkad, filed a request dated 10.5.2007 before the D.E.O. for inter-management transfer as Headmistress to the M.G.T.H.S., Mukhathala, which post became vacant on account of the retirement of Smt.K.Annamma, the Headmistress of the M.G.T.H.S., Mukhathala, with effect from 1.6.2007. The third

respondent also filed I.A.No.1388/2007 before the Division Bench hearing A.S.No.120/2002, to direct the D.E.O. to consider that application in which the Division Bench directed the D.E.O., Kollam, to process the application submitted by the petitioner and to take a decision thereon after affording an opportunity of being heard to the parties who are likely to be affected by the decision. Pursuant thereto, the D.E.O., Kollam, passed Ext.P3 order granting permission for inter-management transfer of the third respondent as Headmistress of the Velayudhan Memorial High School, Vadavannur, Palakkad, as Headmistress of M.G.T.H.S., Mukhathala, in the retirement vacancy of Smt.K.Annamma with effect from 1.6.2007 in terms of Rule 11(1) of Chapter XIVA of the KER. Ext.P3 order is under challenge in this writ petition, at the instance of the Teacher-in-charge of the M.G.T.H.S.

2. The petitioner was functioning as the Teacher-in- charge of M.G.T.H.S., Mukhathala, after the retirement of Smt.K.Annamma. The senior most H.S.A.

of the school Smt.Thulasibhai, has relinquished her promotion in writing. The petitioner being the only other H.S.A., who has passed Account Test Lower and test in Kerala Education Rules having nine years' continuous graduate service in that school, claims a right to continue as Teacher-in-charge as per sub Rule (6) of Rule 45C of Chapter XIV A of K.E.R. The petitioner raises two contentions. The first is that, Rule 11 of Chapter XIVA of the K.E.R does not contemplate inter-management transfer of a Headmistress, but only envisages inter-management transfer of teachers. The second is that the second respondent-DEO, Kollam, is only an interim manager of the school on the basis of a direction of this court and therefore, he has no power to exercise the function of the Manager of the school which involve a policy decision and subjective satisfaction of the management.

3. The learned Government Pleader appearing for respondents 1 and 2 and the counsel appearing for the third respondent, Smt.P.V.Asha, oppose the

contentions of the petitioner. It is submitted that the second respondent being the Receiver-manager appointed by this court to exercise the functions of the manager, he is empowered to take all decisions which the normal manager can take and as such, there is no merit in the contentions of the petitioner in that regard. They would contend that there is no embargo in the K.E.R. against inter-management transfer under Rule 11 of Chapter XIVA of the K.E.R. They would point out that Rule 2(7)(a) of Chapter 1 of the K.E.R. defines the word, "teacher" as including "headmaster". Therefore, although in Rule 11 of Chapter XIVA of the K.E.R. does not specifically refer to the headmasters, by virtue of the above definition, the scope of application of Rule 11 would include headmaster also. They would also refer to other provisions in the Rules which specifically make it clear that the inter-management transfer of headmasters is also contemplated by the Rules. They would therefore submit that there is no merit in the contention that Rule 11 contemplates only inter-

management transfer of teachers and not that of headmasters.

4. I have considered the contentions in detail.

5. I will first deal with the second contention. I am inclined to reject this contention straight away as misconceived. When this court appoints a Receiver to act as the manager of the school, such Receiver-manager has all the powers of the normal manager and there cannot be any restriction on his powers unless this court in the order appointing him as Receiver-manger specifically restricts his powers. Secondly, in I.A.No.1388/2007 in A.S.No.120/2002, a Division Bench of this court itself directed the D.E.O. to consider the application of the third respondent for inter-management transfer and it was pursuant thereto, that Ext.P3 order has been passed. Further, this writ petition was originally tagged on to A.S.No.120/2002. When the same came up before the Division Bench on 11.9.2007, the Division Bench passed the following order;

> "This is a writ petition challenging the order Ext.P3 passed by the District Educational Officer, in his capacity as the Manager of the School (since there are rival claims for the post of managership in the school, which is pending adjudication in appeal A.S.120/2002). <u>There is no dispute regarding the power of the D.E.O., to make the appointment in view of the circumstances as pointed out above.</u> The question as to whether the order passed by the D.E.O. by appointing a person as the Head Master of the school by way of inter-management transfer is valid and whether the present seniormost teacher is qualified to hold the post and in any way affect his right or that of any other teacher as a consequence of Ext.P3 are all matters unconnected with the appeal. Hence the writ petition is separated from the appeal and be posted before appropriate court for hearing on 17.9.2007." (emphasis supplied)

It is evident from the above order that the Division Bench, who had appointed the D.E.O. as the Receiver-manager, has upheld the power of the D.E.O. to make appointment of the third respondent by inter-management transfer. That being so, I have absolutely no hesitation to reject the above contention as

misconceived.

6. The other contention poses a much more difficult question. Since the power of the manager to make inter-management transfer is derived from Rule 11 of Chapter XIVA of the K.E.R., I shall refer to Rule 11 first, which reads thus:

> "11. (1) A teacher serving in any school under one Educational Agency may be transferred to a school under another Educational Agency with the previous approval of the District Educational Officer provided the two Educational Agencies and the teacher agree in writing; and in such cases the number and date of the order of the District Educational Officer containing the approval shall be quoted in the Last Pay Certificate.
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> xxx xxx xxx
>
> **Note**:- The transfer under this rule may be to the post carrying the same scale of pay a higher scale of pay or a lower scale of pay. Provided that no transfer to a higher post shall be made if the person to be transferred does not posses the prescribed qualification for such post or if there are persons with the prescribed qualification in the school eligible for promotion to that post to which the transfer is proposed."

Of course, from the words used therein alone, it may appear that the same refers only to "teacher". But, the term "teacher" is defined in Rule 2(7)(a) of Chapter 1 of the KER, which reads thus:

> "2. **Definitions**:- In these Rules, Unless the context otherwise requires:
>
> xxx xxx xxx
>
> 7(a) 'Teacher' includes the Headmaster;"

6. The learned counsel for the petitioner argues that in spite of the above said definition of the word, "teacher", in the context of Rule 11 the word, "teacher" used therein would not include "headmaster". If it is so interpreted, it would be inconsistent with Rule 13 is the argument raised by him. Rule 13 of Chapter XIVA of the K.E.R. reads thus:

> "13. Teachers who are transferred as per these Rules will continue to receive in the latter school the pay and the scale of pay they were receiving in the former school provided they are transferred to a post carrying the same scale of pay, and their rank

> in the new school will be fixed next below the juniormost teacher in that particular grade in that school, except in the case of transfers under Rule 10 in which case the existing seniority will continue."

The contention is that if a teacher has to take his position in the transferred school by inter-management transfer as the junior most teacher in that school, such teacher cannot be appointed by transfer as headmaster of the transferred school, and therefore, the applicability of Rule 11 has to be restricted to teachers only as the language used therein suggests and not to transfer of headmasters.

7. In answer to this contention, the learned counsel for the third respondent points out that there are other provisions in the Rules which specifically refer to inter-management transfer of headmasters themselves and therefore, the absence of the word, "headmaster" in Rule 11 is of no consequence. A reading of Rule 11 in conjunction with definition of the word, "teacher" in Rule 2(7)(a) of Chapter 1 and Rule 18

of Chapter XIVA, would make it abundantly clear that the K.E.R. do contemplate inter-management transfer of headmasters also. Rule 18 of Chapter XIVA of the K.E.R. also may be extracted for easy reference which reads thus:

> "18. When a teacher or Headmaster is transferred from one school to another whether under the same Educational Agency or under a different Educational Agency, the Headmaster of the former school shall forward a Last Pay Certificate in the prescribed form to the Headmaster of the latter school, who shall make therein an entry relating to the date and time of the teacher's or Headmaster's joining duty. In the case of Headmasters, the Last Pay Certificate shall be countersigned by the Educational Officer."

The learned counsel Smt.P.V.Asha points out that Rule 13 of Chapter XIVA does not in any way admit of any different interpretation of Rule 11. She submits that the intention of Rule 13 is only to protect the pay received by a transferred teacher in the former school and the seniority position as the junior most teacher in the transferred school referred to therein is only in that

particular grade to which the transfer is made. In other words, if a U.P.S.A. is transferred by inter-management transfer, that teacher would rank as the junior most U.P.S.A. and if an H.S.A. is transferred, that teacher would rank as the junior most H.S.A. In the case of headmasters, that question does not arise at all in the case of single school managements because there can only be one headmaster in a school. But, she further points out that the question of seniority would arise in the case of headmasters also if the educational agency has more than one school and for that purpose, Rule 13 would be relevant for inter-management transfer of headmasters also, in which case, such transferred headmasters would rank as the junior most among the headmasters in all the schools put together under the same educational agency.

8. The petitioner has got another contention also to the effect that since under sub rule 6 of Rule 45C of Chapter XIVA of the K.E.R., if no teacher with the prescribed service qualification is available on the

staff of the school or the schools under the educational agency for temporary promotion as headmaster, the senior most teacher on the staff of the school or the schools under the educational agency shall be appointed as Teacher-in-charge and such teacher-in-charge can be replaced as soon as a fully qualified teacher as provided in the rules becomes available. According to the school, the prescription in that rules gives the teacher a right to continue as Teacher -in-charge till a teacher in the school becomes qualified.

9. To this contention, the respondents would submit that there is no such absolute right on any unqualified teacher to continue as teacher-in-charge until she or another teacher of the school acquires the qualifications specified and it would be in the discretion of the manager to replace the teacher-in-charge with a regular headmaster either by direct recruitment or by inter-management transfer, and the right of the teacher-in-charge to continue as such is only till such a regular headmaster is appointed.

10. The counsel for the petitioner particularly stresses the words, "as soon as a fully qualified teacher as provided in the rules becomes available". According to him, under Rule 44 of Chapter XIVA, the headmasters have to be appointed according to the seniority from the seniority list prepared in accordance with the Rules and since there cannot be any inter-se seniority as between two headmasters under different educational agencies, a qualified headmaster as per rule should become available only from among the teachers of that particular school.

11. He also refers to sub-rule (2) of Rule 45C also. He points out that under sub-rule (2) of Rule 45C, a teacher temporarily promoted under sub-rule (1) of Rule 45C as headmaster is to be replaced as soon as possible by the member of the service who becomes entitled to promotion under the Rules. According to him, that also indicates that such headmaster can only be a teacher in the service of that school itself and not a teacher or headmaster in the service of another

school under a different management.

12. This contention is refuted by the counsel for the third respondent stating that no such absolute right on teachers of the same school alone to be appointed as headmasters is not contemplated under the Rules, is the contention. According to her, it is the duty of the manager to see that the school has a qualified headmaster as early as possible since it would be not in the interests of the school or the students to continue running the school without a properly qualified headmaster. For that the manager can, if no qualified teacher is available in the school, resort to appointment of a qualified Headmaster either by direct recruitment or by inter management transfer, submits counsel for the third respondent.

13. At the outset, I must state that the very object of the Kerala Education Act and Rules is not merely to confer certain benefits on teachers of schools. As the preamble of the Kerala Education Act suggests, the object of the Act and Rules, is a far wider one. The

Preamble reads thus:

> "Preamble:- Whereas it is deemed necessary to provide for the better organisation and development of educational institutions in the State providing a varied and comprehensive educational service throughout the State."

The same would show that it is for the betterment of the standards of education in the State that the Kerala Education Act and Rules aims at. The Kerala Education Rules, 1959, has been made by the Government of Kerala in exercise of their power under Section 36 (1) of the Act which power reads thus:

> "36. **Power to make rules** – (1) The Government may make rules [either prospectively or retrospectively] for the purpose of carrying into effect the provisions of this Act."

The provisions of the Act being betterment of standards of education in the State, the most important factor under the Kerala Education Act and Rules should be the students of the school and their education. Therefore, any interpretation of the provisions of the Act and Rules

should also serve to promote that object.

14. It cannot be doubted for a moment that the school without a qualified headmaster would be a ship without a rudder. The importance of the post of Headmaster has been stressed in decisions of the Supreme Court and this Court time and again. On behalf of a Full Bench of this Court, the Chief Justice Mr.M.S.Menon, as he then was, had, in his characteristic style, described the importance of the role of Headmaster of a school thus:-

> "The post of the headmaster is of pivotal importance in the file of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon-except to the extent of prescribing the requisite qualifications and experience- cannot but be considered as a violation of the right guaranteed by Art.30 (1) of the Constitution. To hold otherwise will be to make the right 'a teasing illusion,

a promise of unreality' ". (p.794)

After referring to the above passage and other decisions of the Supreme Court, the Supreme Court in the decision of **Ammad** v. **Emjay High School** (1998 (2) KLT 828((S.C) reiterated the same in the following words:-

> "17. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster, can improve it by leaps and bounds. The functional efficacy of a school very mush depends upon the efficiency and dedication of its Headmaster. This prestine precept remains unchanged despite many changes taking place in the structural patterns of education over the years."

15. The post of headmaster being so vital to the effective functioning of the school, it is important that

the post of headmaster should not be left vacant for long. A vacancy, if arises, should be filled up by a duly qualified person at the earliest. Unqualified temporary headmaster or teacher-in-charge should be replaced without any delay. The provisions in the K.E.R. permitting such temporary headmaster or teacher-in-charge are ad-hoc arrangements not to be continued so as to enable a teacher of the school to obtain necessary qualifications for regular promotion. The Rules should be interpreted in the above back ground.

16. Of course Rule 11, which permits inter-management transfer, speaks only about teachers unlike in the case of Rule 10 which relates to intra-management transfer. But by Rule 2(7)(a) of Chapter I of the K.E.R., the expression 'teacher' has been defined to mean headmaster also. Therefore, naturally Rule 11 has to be read as applying to headmaster also. The fact that Rule 13 stipulates that the rank of teachers transferred will be fixed below the junior-most teacher in that grade in that school, does not in any way render

such interpretation unworkable. The words 'in that particular grade' would mean that if a L.P.S.A. is transferred he/she would rank as the junior-most among L.P.S.As., if a U.P.S.A. is transferred, he/she would rank as junior-most among U.P.S.As. and if a H.S.A. is transferred, he/she would rank as junior-most among H.S.As. in that school. In fact, in the case of headmasters also, such seniority would be relevant if the educational agency, which accepts the inter-management transfer of headmaster, has more than one school since it would be necessary to fix the seniority among the headmasters in the various schools under the educational agency. Simply because in single school managements, such seniority is not relevant, that would not necessitate an interpretation restricting inter-management transfer under Rule 11 to teachers alone. This is put beyond any doubt by Rule 18 which specifically refers to inter-management and intra-management transfers of Headmasters also requiring forwarding of Last Pay Certificate to the school to

which transfer is made.

17. Therefore, there cannot be any doubt that the Rules themselves contemplate inter-management transfers of headmasters also.

18. Even otherwise, a purposive interpretation roping in inter-management transfer of headmasters also is called for in view of the larger interests of education in the State also. A temporary teacher or a teacher-in-charge cannot effectively function like a qualified headmaster. Firstly, he/she would not have the motive or inclination to be an effective headmaster because of the uncertainty of his/her position. Secondly, he/she would not command the respect of the teachers and students leading to indiscipline and lowering of standards of education in the school. Therefore, in the interest of not only the institution as also the standards of education, it is imperative that such temporary headmaster or teacher-in-charge should be replaced by a qualified headmaster within the minimum possible time. For that, the manager can

resort to either direct recruitment or inter-management transfer as provided in Rule 11.

19. The argument advanced by the counsel for the petitioner that the senior-most teacher has a right under Rule 45C to be teacher-in-charge till a teacher in the service of the school requires the necessary qualifications prescribed by the Rules. That Rule is intended to regulate the ad-hoc arrangement among unqualified hands pending regular appointment and is not intended to confer an absolute right to continue as such for months and years together, prohibiting regular appointment either by direct recruitment or by inter-management transfer. That procedure is intended for filling the vacuum for a short time for administrative purposes. A contrary interpretation would defeat the very object of the Act and Rules which is intended at the betterment of standards of education in the State.

20. Therefore, there cannot be any doubt that Rule 45C cannot come to the assistance of the petitioner to continue as teacher-in-charge till she or

another teacher acquires the prescribed qualifications.

21. Lastly, the petitioner raises a contention that since the D.E.O. himself is acting as the manager of the school, he is acting in his own cause, which cannot be permitted. I am of opinion that sanctioning of inter-management transfer being only an administrative action, the principle of judging one's own cause can be applied to the same. Even otherwise, in such case, the doctrine of necessity applies, as in the case of an administrator appointed in the place of the managing committee of a society under the Co-operative Societies Act. [See **Elamgulam Service Co-operative Bank Ltd.** v. **Gopinathan Nair** (2007(1) KLT 147)(D.B.)]

22. Therefore, there is no merit in the challenge against Ext.P3 and accordingly, the writ petition is dismissed.

S. SIRI JAGAN,
Judge

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S.SIRI JAGAN, J.

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DATED: -0-2007